

REMARKS

The Examiner required restriction of one of the following inventions:

Group I, including claims 1-33, drawn to a method and an apparatus for counting cells; or

Group II, including claim 34, drawn to a milking robot.

In response to the Examiner's restriction/election requirement, Applicant elects, with traverse, to prosecute Group I including claims 1-33. Applicant specifically reserves the right to file a divisional application directed to non elected claim 34.

With respect to Applicant's traversal, Applicant respectfully directs the Examiner's attention to M.P.E.P. § 803 which states:

"If the search and examination of an entire application can be made without serious burden, the Examiner must examine on the merits, even though it includes claims too distinct or independent invention." (emphasis added)

There are two criteria for a proper requirement for restriction. The invention should be independent or distinct, and

"2) there must be a serious burden on the Examiner if a restriction is not required. See M.P.E.P. §803.092, 806.04 A through J, 808.01(a) and 808.02."

Applicant respectfully submits that the Examiner would not be unduly burdened if forced to examine Groups I and II.

Applicants further respectfully submit that claim 34 indirectly depends on independent claim 18. Upon allowance of independent claim 18, Applicants respectfully request rejoinder and allowance of dependent claim 34.

Further, as requested by the Examiner, Applicants elect species A directed to claim 1-23 and 25-33.

Applicants further respectfully submit that claim 24 directly depends on independent claim 18. Upon allowance of independent claim 18, Applicants respectfully request rejoinder and allowance of dependent claim 24.

For all of the above stated reasons, reconsideration and withdrawal of the outstanding restriction/election requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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By _____

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